IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1027 OF 2005

AND

CIVIL APPLICATION NO. 1028 OF 2005

IN

FIRST APPEAL NO. 249 OF 1993

Vinayak Baburao Khandagale ..Appellant

versus

Dharamdas T. Kothi ..Respondent

And

Smt. Vital V. Khandagale

& Ors. ..Applicants

Mr. M. K. Nesai for the Appellant / Applicants.

Mr. V. K. Merchant i/b. M/s. Kishore Thakrodas & Co. for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 14TH MARCH,2005

P.C. :

1. These two Applications have been filed by the applicants. So far as first application i.e. Civil Application No.1027 of 2005 is concerned, the original appellant died and his L.Rs. have filed

this application, and so far as second application i.e. Civil Application No. 1028 of 2005 is concerned the same is for bringing the L.Rs. of the respondent on record. But that second application can be heard only if the first Civil application is allowed.

2. Both these applications are being opposed by the respondents. He has filed affidavit in reply. Original appellant died on 20.8.2003. There is a delay of one year and 88 days in taking out this application and the only ground that is given for delay is ignorance of the applicants about pending proceedings.

3. Counsel for the respondents pointed out that the suit was filed by him before the Court in 1973 which was concluded in 1991; the appellant examined five witnesses and the suit was in respect of the property which is adjacent to each other's property. He therefore contended that it is impossible to believe that even though the suit was pending for such a long time and the dispute was in respect of the property adjoining each other's property, then the applicants did not have knowledge about the pendency of the suit. Counsel for the applicants Mr. Nesari contended that the applicants are illiterate and therefore they could not know about

the suit or the appeal.

4. It is difficult to accept the explanation given by the applicants. Pleading ignorance is easy but in the circumstances as pointed out by counsel for the respondents this is not a case where parties can plead and prove ignorance. If the suit was going on for about 20 years and original appellant had examined five witnesses and the suit was in respect of the property which was very much in the neighbourhood of their own, then plea of the applicants that they were ignorant of the proceedings, cannot be accepted. There is therefore no explanation for the delay of 1 year and 88 days in taking out this application. As a result the Civil Application No.1027 of 2005 is required to be dismissed and is dismissed. In view of this order, Civil Application No.1028 of 2005 does not survive, the same is also dismissed. Consequently if the appeal abates the appeal is also dismissed. No order as to costs in the Civil Applications and in Appeal.

14.03.2005 (D.G. DESHPANDE, J.)